

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

NOT FOR PUBLICATION

TVGA Engineering, Surveying, P.C.,  
d/b/a TVGA Consultants, d/b/a Accident  
Reconstruction Plus, d/b/a Lockwood  
Geospatial Services,

Debtor

Case No. 12-12665 K

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Wendy J. Christophersen, as Chapter 7 Trustee of  
TVGA Engineering, Surveying, P.C.  
d/b/a TVGA Consultants, d/b/a Accident  
Reconstruction Plus, d/b/a Lockwood  
Geospatial Services,

Plaintiff

-vs-

AP No. 14-01104 K

James E. Pahel

Defendant

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OPINION AND ORDER

The Trustee's counsel has called attention to Adam N. Steinman's, *The Rise and Fall of Plausibility Pleading?*, 69:2 Vand. L. Rev. 333 (2016). At pages 367 through 381, it examines High Court decisions since *Iqbal* and *Twombly*, which depended upon those cases for a result.

In light of that analysis and the other arguments submitted by the Trustee's counsel, the Court finds that the 3<sup>rd</sup> Amended Complaint satisfies the

“plausibility” test. Consequently, the Motion to Dismiss is denied with regard to the *Twombly/Iqbal* theory.<sup>1</sup>

Unless the 11 U.S.C. §546(e) basis for the Rule 12(c) dismissal of the Third Amended Complaint is sustained, this A.P. would be appropriate for a final pre-trial order, and scheduling of a trial. As was previously ordered, the Trustee now shall have until October 24, 2016 to submit her response to the Defendant’s §546(e) “safe-harbor” defense.<sup>2</sup>

SO ORDERED.

Dated: Buffalo, New York  
September 22, 2016

s/Michael J. Kaplan

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U.S.B.J.

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<sup>1</sup>The Defendant’s *Stern v. Marshall* argument as to the preference cause of action is rejected in light of the District Court’s Standing Order of Reference dated February 29, 2012. This Court will decide whether the Order applies if and when the Court is prepared to “decide” the merits of what remains of this Adversary Proceeding.

<sup>2</sup>The only extent to which this writer has considered that defense is contained in *In re Batavia Nursing Home, LLC*, Case No. 11-13223K, decision dated July 29, 2013. (Copy attached.)